USTA proposes that the Commission modify this rule to state simply that each utility shall establish a presumptive average number of attachers for each state.

Review of the pole attachment rules would provide other opportunities for streamlining. There is no statutory requirement mandating the methodology to be used to determine the operating expenses and actual capital costs that must serve as the basis for pole attachment rates. The Commission need not rely on Part 32 to require a particular methodology since there are other entities that are not subject to Part 32 but still must set pole attachment rates. Therefore, USTA recommends that the Commission eliminate its reliance on the Part 32 rules to determine pole attachment rates. All carriers should be permitted to calculate capital costs and expenses consistent with Generally Accepted Accounting Principles (GAAP), without specifying the accounts to be used.

In addition, USTA recommends that the Commission consider relieving carriers of its requirement to recalculate pole attachment rates on an annual basis. Generally, these rates do not change significantly each year. Permitting carriers to recalculate every three years, for example, would reduce administrative burdens and provide certainty. The Commission could also reduce the number of unnecessary complaints if it utilized general presumptions regarding the reasonability of pole attachment rates. For example, the Commission could adopt a presumption that a rate is not excessive if an equal or higher rate has been in effect for a period of over twelve months without complaint. Likewise, the Commission could adopt a presumption that rates established under a long-term agreement are presumed reasonable for the length of the agreement.

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[43] USTA Petition for Reconsideration, CS Docket No. 97-151, filed April 13, 1998.

Part 17 – Construction, Marking, and Lighting of Antenna Structures (Mass Media Bureau).

USTA again recommends that the Commission eliminate the duplication that exists between the Part 17 rules and the rules promulgated by the Federal Aviation Administration (FAA). This is an area where the FAA could maintain primary jurisdiction. If so, many of the Commission's current rules could be deleted.

Part 32 – Uniform System of Accounts for Telecommunications Companies (Accounting Safeguards Division).

In its 1998 biennial review proposal, USTA explained that the Act does not preclude the Commission from allowing incumbent LECs to utilize GAAP in lieu of the Uniform System of Accounts. The Part 32 rules, which became effective in 1988, no longer reflect how incumbent LECs do business and subject incumbent LECs to needless regulatory requirements. For example, on average, the BOCs must maintain property records for an excess of 50 million units of equipment due to regulatory requirements. Companies that are not subject to the Part 32 property record requirements maintain, on average, property records for less than 1 million such units.[44] USTA has urged the Commission to set a firm date by which to complete the conversion to GAAP and to permit incumbent LECs that already rely on GAAP for financial purposes to utilize GAAP for regulatory purposes. Such a step would pave the way for a significant reduction in onerous accounting, recordkeeping and reporting requirements without materially affecting the Commission's ability to monitor incumbent LECs.

On April 21, 1999, the Common Carrier Bureau held a workshop to solicit ideas on reform initiatives that could be undertaken in Phase I of its two-phase comprehensive review of the Commission's accounting rules as well as the reporting requirements of the Automated

Reporting Management Information System (ARMIS).[45] USTA was limited to three areas of discussion and, thus, was only permitted to recommend three changes to the current rules: eliminate the Part 32 expense matrix, streamline the Part 64 audit requirements and modify the ARMIS reports by streamlining ARMIS 43-02 and eliminating the ARMIS 495A and 495B reports.[46]

During the workshop, USTA explained that elimination of the expense matrix required in Section 32.5999(f) of the Commission's rules would have no impact on Part 32 functional accounting. All expenses recorded in the specific accounts would continue to be recorded in the same accounts. The computation of pole attachment rates would not be impacted by the elimination of the expense matrix. Since entities not subject to Part 32 as well as carriers operating under Class B accounting are able to calculate these rates consistent with the Commission's requirements, there is no reason to require the continuation of the expense matrix in order to calculate pole attachment rates. USTA could not perceive any benefit to be derived from continuing to report this information.

In an *ex parte* filing submitted on June 2, 1999, USTA responded to questions raised during the workshop and provided additional recommendations for rules changes which should be included in the Commission's Phase I review.[47] These changes, in addition to the elimination

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[44] Letter from Carl R. Geppert, Arthur Andersen LLP, CC Docket No. 98-81, ASD File No. 98-64 and CC Docket No. 98-177, July 15, 1998.

[45] Common Carrier Bureau Announces Agenda for Initial Workshop for Phase I of the Comprehensive Review of Accounting and Reporting Requirements and Treatment of Ex Parte Presentations in Related Proceedings, Public Notice, DA 99-758 (rel. April 19, 1999). The Commission recently released its NPRM initiating Phase I of its comprehensive review. Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I, CC Docket No. 99-253, *Notice of Proposed Rulemaking*, FCC 99-174 (rel. Jul. 14, 1999). [Phase I NPRM]. USTA will provide specific comment on the Phase I proposals.

[46] *See*, *infra*., for further discussion of Part 43 and Part 64 rules changes.

[47] Letter from Linda L. Kent, Associate General Counsel, USTA, to Ms. Magalie Roman Salas, CC Docket Nos. 98-177, 98-81 and 96-150, WT Docket No. 96-198 and ASD File No. 98-64, June 2, 1999.

of the expense matrix discussed above, and those included in the 1998 biennial review proposal as well as in USTA's comments in CC Docket No. 98-81, are listed in the attached matrix and reflected in the attached rules:

1). Adopt Class B Accounting for all LECs. The use of Class B accounts by all LECs would reduce the number of Commission-prescribed accounts from 261 to 109, the number of subaccounts from twelve to five and would eliminate all subsidiary records. Class B accounts can be used to separate costs between regulated and nonregulated operations.[48] The Part 36 rules are already based on Class B accounts. Using Class B accounts will facilitate streamlining of ARMIS reports as will be described below. Incumbent LECs should not be required to maintain subaccounts or subsidiary records that do not serve a business purpose.

2). Streamline Property Records and Depreciation as Defined in Section 32.2000. The Commission should replace the detailed instructions for Telecommunications Plant accounts with more general guidelines that rely on GAAP internal controls. The current level of detail is unnecessary and serves no business purpose. Specifically, the Commission should eliminate the "how to" descriptions for each account; eliminate the requirement to file retirement unit lists (relying instead on GAAP depreciation and retirement standards); eliminate Section 32.2000(g)(4) and (5); allow use of GAAP internal controls and permit incumbent LECs to establish expense limits.

3). Eliminate the Jurisdictional Difference Accounts. The Jurisdictional Difference Accounts do not contain USOA amounts and are not used for Federal regulatory oversight. The information in these accounts is already provided to the state regulatory agencies. These accounts should be eliminated from Part 32.

4). Eliminate the Pre-Notification Requirements. The pre-notification requirements (Sections 32.13(a)(3), 32.16, 32.25 and 32.2002) to journalize GAAP-required unusual items and contingent liabilities should be eliminated.[49] Although the Commission permits incumbent LECs to adopt new accounting standards approved by the Financial Accounting Standards Board (FASB); carriers must file complex revenue requirement forecasts and seek formal permission from the Commission. This process delays implementation on the regulated books. These GAAP entries are made to accounts that are not even included in the ratemaking process. Incumbent LECs should be permitted to simply adopt new FASB standards, just as other companies do, without performing a costly revenue requirement study. The FASB process is open to the public and changes in FASB standards are subject to debate and evaluation. Incumbent LECs already provide notification of FASB changes on both the SEC Form 10-K and the ARMIS 43-02. Identifying unusual items and contingent liabilities is required by GAAP and should not require Commission approval as well. Preapproval should not be necessary for

[48] Although USTA believes that the Part 64 allocation of costs between regulated and nonregulated activities is no longer necessary, use of Class B accounting would have no impact on the existing Part 64 rules.

[49] The Commission proposed to eliminate the prenotification requirements in Section 32.13, 32.25 and 32.2002 in the Phase I NPRM.

reflecting property as held for future use if longer than two years. Finally, incumbent LECs should not be required to seek Commission approval to set up temporary/experimental accounts.

5). Eliminate Section 32.26. The Commission should replace Section 32.26 with the GAAP standard for materiality as contained in the Statement of Financial Accounting Concept No. 2. Incumbent LEC competitors are utilizing GAAP standards for materiality. There is no reason to prohibit incumbent LECs from using the same standards.

6). Eliminate the Part 32 Rules for Transactions With Affiliates for Nonregulated Activities. Affiliate transactions that are accounted for as a nonregulated activity pursuant to the Part 64 cost allocation rules need not be subject to an additional set of rules in Section 32.27. Affiliate transactions that are accounted for as a nonregulated activity are those transactions that are journalized on the incumbent LECs' books of account to a Part 64 cost pool that directs all the costs for that affiliate transaction to nonregulated. Because the dollars for affiliate transactions accounted for as nonregulated activities are assigned directly to nonregulated, the ratepayer does not benefit from a sale to an affiliate nor does the ratepayer incur the cost of a purchase from an affiliate. Transactions between a Section 272 affiliate and a BOC are already subject to more stringent accounting, disclosure and nondiscrimination safeguards.

7). Streamline the Part 32 Affiliate Transaction Rules. The overly detailed requirement to compare a cost-based price to a fair market value price to determine which is higher (or lower depending upon the direction of the transaction) should be eliminated.[50] Fair market value studies are time consuming and expensive. In addition, the benchmark to use prevailing price should be changed from 50 percent on a product by product basis. It should not be necessary to require that half of the sale of a given service be provided to nonaffiliates before that price can be used as a transfer price when five percent or even ten percent is sufficient.

8). Allow De Minimis Nonregulated Activity to be Accounted for as Regulated Incidental Activity. The Commission should permit incumbent LECs to account for de minimis nonregulated activity as regulated incidental activity. Incumbent LECs have not been permitted to add to their list of Incidental Activities in the CAMS since the lists were originally submitted. So long as the activity does not exceed the one percent cap on total revenue, incumbent LECs should be allowed to update their CAMs accordingly.

9). Treat Tariffed Incidental InterLATA Services as Regulated for Accounting Purposes. These tariffed services should not have to be accounted for as nonregulated, as the current rules require, as this only increases the administrative burden on incumbent LECs.

10). Replace the Annual Inventories with the GAAP Requirements for Periodic Inventories. The detailed inventory requirements are burdensome. Incumbent LECs should be permitted to use GAAP as the basis for performing inventories for material and supplies and station apparatus.

[50] The Commission has proposed to eliminate this requirement for transactions under $250,000 in the Phase I NPRM.

11). Consolidate the Tax Accounts. The level of detail in the tax accounts exceeds GAAP requirements and is overly burdensome.

In an Order released on June 30, 1999, the Commission eliminated Class A accounting requirements for certain mid-sized incumbent LECs that meet a revenue threshold.[51] The Commission also adopted a limited number of changes that impact all carriers subject to Part 32. Finally, the Commission recognized that its accounting and cost allocation rules need to be streamlined. USTA looks forward to the time when the Commission takes a serious look at its Part 32 rules, addresses all of USTA's proposals and begins the transition to GAAP by adopting significant streamlining.

Part 36 – Jurisdictional Separations Procedures; Standard Procedures for Separating Telecommunications Property Costs, Revenues, Expenses, Taxes and Reserves for Telecommunications Companies (Accounting Policy Division).

The Commission's proceeding to examine the jurisdictional separation of costs is still pending.[52] So long as rates are regulated at the state and Federal levels, costs must be assigned to the appropriate jurisdiction so that the incumbent LEC can be afforded a meaningful opportunity to recover all of its costs. However, the current complex process that requires detailed studies of incumbent LEC regulated costs could be simplified by freezing the jurisdictional allocations and categorizations factors. This would allow for greater administrative simplicity and stability.

[51] 1998 Biennial Regulatory Review of Accounting and Cost Allocation Requirements, United States Telephone Association Petition for Rulemaking, Implementation of the Telecommunications Act of 1996 Accounting Safeguards un the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Petition for Rulemaking to Amend Part 32 of the Commission's Rules, Uniform System of Accounts for Class A and Class B Telephone Companies, to Adopt the Accounting for Software Required by Statement of Position 98-1, *Report and Order in CC Docket No. 98-81, Order on Reconsideration in CC Docket No. 96-150 and Fourth Memorandum Opinion and Order in AAD File No. 98-43,* FCC 99-106 (rel. June 30, 1999).
[52] Jurisdictional Separations Reform and Referral to the Federal –State Joint Board, *Notice of Proposed Rulemaking,* CC Docket No. 80-286, FCC 97-354 (rel. Oct. 7, 1997).

Specifically, USTA has proposed that all jurisdictional allocations percentages and category relationships be frozen immediately, based on annual data already collected by the price cap LECs. For non-price cap LECs, only the jurisdictional allocation percentages would be frozen based on a three-year average of data. This proposal meets the Joint Board's stated criteria that jurisdictional separations be competitively neutral, administratively simple and maintain cost causation principles. In addition, USTA's proposal avoids significant jurisdictional cost shifts and the associated impacts on customers. It can be implemented immediately without impacting other rules and will provide stability in the separations process to facilitate planning for expenditures in order to maintain known relationships.

Part 42 – Preservation of Record of Communications Common Carriers (Accounting Safeguards Division).

Part 42 of the Commission's rules prescribes regulations governing the preservation of records by common carriers. These rules are outdated and unnecessary. Incumbent LECs should be permitted to determine the most efficient manner in which to conduct their recordkeeping. As in 1998, USTA recommends that Sections 42.01 through 42.07 be eliminated. Consistent with the Commission's recent decision in CC Docket No. 96-61, Section 42.11, regarding the public availability and retention of information concerning detariffed interexchange services, should be maintained, but could be moved to Part 61 which contains the other tariff requirements, thereby eliminating the need for this part of the Rules.[53]

[53] Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, FCC 99-47, *Second Order on Reconsideration and Erratum*, (rel. March 31, 1999).

Part 43 – Reports of Communication Common Carriers and Certain Affiliates (Accounting Safeguards Division).

Overall, the majority of reports required in Part 43 have outlived their usefulness. The time and expense required to compile, update and file these reports simply serve to divert resources from providing customers with the services they demand. The competitive nature of some of the information simply provides the competitors of the incumbent LECs with sensitive information.

In a recent Order, the Commission streamlined the ARMIS Reports 43-01 and 43-04 by eliminating the requirements that carriers report data pertaining to inside wire and payphone investment as well as much of the equal access information.[54] The Commission also eliminated 21 tables from the ARMIS 43-02, including tables B-3, B-5 through B-15, C-1, C-2, C-4, C-5 and I-3 through I-7 for certain mid-sized incumbent LECs that meet a new revenue threshold. Finally, the Commission revised the reporting requirements by eliminating the paper filing and diskette filing requirements. While the Order is certainly consistent with USTA's objective in CC Docket No. 98-117, it does not address USTA's proposals. It relies on outdated data to conclude that competition has not developed sufficiently to justify radical changes to the ARMIS reporting requirements. It discusses the importance of the ARMIS reports in preserving the Commission's ability to monitor industry developments when only large incumbent LECs are required to report ARMIS data thereby precluding any possibility that the Commission will be able to monitor all industry developments. It notes that ARMIS is important in quantifying the effects of alternative regulatory proposals when the Act requires the Commission to rely on

[54] 1998 Biennial Regulatory Review of ARMIS Reporting Requirements, Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, *Report and Order in CC Docket No. 98-117 and Fifth Memorandum Opinion and Order in AAD File No. 98-43,* (rel. June 30, 1999).

competitive markets not regulation. Such halfhearted efforts do not fulfill the Commission's statutory mandate.

During the April 21 workshop, USTA recommended that the Commission streamline the ARMIS 43-02 and eliminate the ARMIS 495A and B reports. As explained at the workshop, Schedules C-1, C-2, C-4 and C-5 duplicate information contained in the 10-K and should be eliminated for the remaining reporting carriers. Schedules B-3, B-7, B-8, B-9, B-10, B-11, B-12, B-13, B-14, B-15, I-3, I-4, I-5, I-6 and I-7 require detail that is no longer relevant for incumbent LECs under price cap regulation and should be eliminated for these carriers as well.

In its June 2 *ex parte*, USTA demonstrated that the amount of shared investment does not justify the expense incurred in preparing and filing the ARMIS 495 reports. USTA recommended that instead of forecasting usage for Central Office and Outside Plant assets and then reporting the amounts on the ARMIS 495A and B, incumbent LECs could use actuals (those used to allocate plant maintenance and repair) to allocate the related investment.

At the very least, USTA urges the Commission to evaluate these reports in light of the mandate of the 1996 Act. None of the reports are required to meet any statutory obligation created by the Act and the Commission could employ less burdensome and expensive alternatives to collect data that may be required under the Act. For example, the tariff process provides the Commission with the information needed to ensure that rates are just and reasonable. The SEC Form 10-K and annual shareholder reports could be utilized for the relevant financial information. If necessary, streamlined cost allocation manuals could be maintained and made available upon request. Finally, when specific data is required, the Commission and/or State regulatory bodies could issue data requests, although these should be applicable to all telecommunications carriers, not just the incumbent LECs.

USTA continues to recommend consolidating the ARMIS 43-01 through 43-04 into a single report.[55] This step alone would reduce the number of pages to be filed from 191 to five. It would contain four Tables: Balance Sheet Investment, Income Statement, Footnotes and Accounts Payable to Affiliates. The format would be consistent with the current 43-01. The consolidated report eliminates cash flow information which is already available from existing external reports; eliminates the demand data from Table 2 of the 43-01 since interstate minutes of use and access lines are already reported in the Tariff Review Plans; streamlines the 43-02 and eliminates the 495 A and B reports; reduces the Part 69 reporting categories currently contained in the 43-01 from sixteen to six; and employs the Class B level of detail consistent with Part 36.[56] These changes alone would substantially reduce the volume and complexity of the current ARMIS financial reports and significantly minimize the reporting burden.

In 1998, USTA also recommended eliminating the ARMIS network reports. These reports were instituted to assist the Commission in monitoring service quality and infrastructure development when price cap regulation was first adopted. These reports have served their purpose and are no longer needed. Price cap regulation has been in effect for almost a decade and service quality has not been a problem. In the alternative, USTA proposed streamlining these reports as follows:

1). Eliminate Table 1 of the 43-05. This report no longer serves any regulatory purpose. The market for switched and special access services is highly competitive, as evidenced in the forbearance filings submitted during the past year and in the record in CC Docket No. 96-262. Given that the customers of these services are primarily interexchange carriers and large corporations who closely monitor these services on a real-time basis and demand immediate corrective action if a problem exists, this report is superfluous. Specifications regarding installation and repair intervals are included in tariffs and publicly available service agreements.

[55] 1998 Biennial Regulatory Review – Review of ARMIS Reporting Requirements, CC Docket No. 98-117, *Notice of Proposed Rulemaking*, FCC 98-147 (rel. July 17, 1998).

[56] Although USTA believes that the Part 64 allocation of costs between regulated and nonregulated activities is no longer necessary, the proposed ARMIS report would have no impact on the existing Part 64 rules.

2). Eliminate Table II of the 43-05. Local service is within the jurisdiction of the state regulatory commissions. Such information can be collected by the states if necessary.

3). Eliminate Table III of the 43-05. The Commission has found that service quality has not declined under price cap regulation. There is no longer any need to require reporting of common trunk blockage.

4). Eliminate Table IV.A of the 43-05. After this Table was implemented, incumbent LECs were later required to file separate initial and thirty-day service disruption reports on major service disruptions exceeding specified thresholds. The information is also provided in summary form on Table IV. There is no need to continue this report.

5). Eliminate Table V of the 43-05. The Commission and/or the state regulatory commissions should maintain complaints. Incumbent LECs should not be required to shoulder this reporting burden.

6). Eliminate the 43-06. The customer satisfaction survey is no longer necessary. Customers can register their dissatisfaction by filing a complaint with the appropriate agency or switching to another carrier.

7). Eliminate Table I of the 43-07. The public network services included in this Table are ubiquitous and there is no longer any need to report this information.

8). Eliminate Table II of the 43-07. There is no longer any need to report on the deployment of fiber by incumbent LECs.

9). Eliminate Tables III and IV of the 43-07. These Tables no longer serve any regulatory purpose. The Common Carrier Bureau has suggested that they be eliminated.

10). Eliminate Columns d through o of the 43-08. The detail included in these columns is no longer necessary.

11). Eliminate Table II of the 43-08. This Table no longer serves any regulatory purpose and should be eliminated.

12). Eliminate Table III of the 43-08. This Table is no longer necessary and should be eliminated.

13). Eliminate Table IV of the 43-08. This Table is no longer necessary given the competitive environment and should be eliminated.

Part 43 also contains rules regarding depreciation reporting. On September 21, 1998, USTA filed a petition for forbearance of Sections 32.2000(g) and 43.43 of the Commission's rules.[57] The current form of depreciation regulation and represcription are outdated and do not reflect changes in technology triggered by competition in the industry. USTA demonstrated that forbearance is required pursuant to Section 10 of the Act. Depreciation regulation of price cap LECs is not necessary to ensure that rates are just and reasonable, is not needed to protect consumers and would be in the public interest. Grant of USTA's petition will permit incumbent LECs to use lives based upon GAAP. Many states have already adopted GAAP for depreciation. For example, all nine states in the BellSouth region permit the use of GAAP for booking intrastate depreciation. Other states that also permit use of GAAP include Arkansas, California, Idaho, Michigan, Missouri, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Wisconsin and Wyoming. USTA urges the Commission to grant its petition.

Part 51 – Interconnection (Competitive Pricing Division).

As the Commission has acknowledged, the market for advanced telecommunications is a nascent one. Both incumbent LECs and new entrants are at the early stages of developing and deploying innovative new technologies.[58] In its Order in CC Docket No. 98-147, the Commission stated its commitment to removing barriers to competition so that "“incumbent LECs are able to make their decisions to invest in, and deploy, advanced telecommunications services based on market demand and their own strategic business plans, rather than on regulatory requirements.”[59] Despite that objective, the Commission then adopted new rules to require incumbent LECs to make available to a requesting competitor shared cage and cageless collocation for all equipment used for interconnection and/or access to unbundled network elements, even if it includes a switching or enhanced services functionality. Incumbent LECs

[57] USTA Petition for Forbearance ASD 98-91.

[58] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48, (rel. Mar. 31, 1999) at ¶ 2.

must permit collocation in adjacent controlled environmental vaults of similar structures if collocation space is exhausted. These policies are in stark contrast to AT&T's refusal to provide access to its cable plant. "AT&T has argued that it shouldn't have to open its network to rivals that aren't taking the multibillion dollar risk of buying and upgrading it."[60] The Commission has consistently refused to address this issue. This is hardly a level playing field for a nascent market. Therefore, USTA urges the Commission to put an end to regulatory interference and allow the marketplace to respond and true competition to flourish by ensuring that none of the rules in this section are applied to incumbent LEC provision of advanced services.[61]

Part 61 – Tariffs (Competitive Pricing Division).

In its 1998 biennial review proposal, USTA recommended restructuring the Part 61 and Part 69 rules. USTA suggested that Part 61 contain only carrier tariff requirements. Rules associated with price cap regulation would be moved to a new Part XX and rules associated with rate of return regulation would be moved to Part 69. In its recent Order related to the 1998 biennial review for Part 61, the Commission did adopt some cosmetic changes to Part 61.[62] USTA's proposals, as well as additional streamlining as discussed below, are included in the attached rules changes for the 2000 biennial review. The rules do reflect the changes adopted by the Commission.

USTA has modified the tariff filing requirements to make them consistent with the streamlined tariff procedure contained in Section 204(a)(3) of the Act and provided additional

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[59] *Id.* at ¶ 3.

[60] "Internet Access Battle Erupts," *The Wall Street Journal*, January 22, 1999 at A6.

[61] *See,* Petitions of Bell Atlantic, U S WEST and Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket Nos. 98-11, 98-26 and 98-32 and Petition of Southwestern Bell, Pacific Bell and Nevada Bell for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service.

streamlining of the detailed cost support requirements of the current rules. Non-dominant carriers, such as AT&T and MCI/WorldCom file tariffs considered prima facie lawful on one day's notice with no cost support. These and other competitors of incumbents LECs can use the tariff process to delay incumbent LEC offerings and/or to respond even before the incumbent has received Commission approval. This activity distorts the competitive process and denies consumers the full benefits of competition. The Commission itself has found that significantly streamlined tariff filing requirements serve the public interest by promoting price competition, fostering service innovation, encouraging new entry into various segments of telecommunications markets and enabling firms to respond quickly to market trends.[63]

Tariffing restrictions on incumbent LECs also have a detrimental impact on the operation of the market by failing to encourage economic efficiency. Unnecessary constraints on an incumbent LEC's pricing leads to losses in economic efficiency because incorrect market signals are provided to participants. "Moreover, incorrect market signals can lead to inefficient investments in the telecommunications network: e.g., when a customer decides to purchase from a competitor whose incremental cost is higher than the ILEC's but who, nevertheless, can charge a lower price because the ILEC is prevented from responding by tariff constraints. Such investment results in inefficient duplication of the telecommunications network which raises the cost of telecommunications services to all customers (because customers are not receiving the

[62] 1998 Biennial Regulatory Review – Part 61 of the Commission's rules and related Tariffing Requirements CC Docket No. 98-131, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996 CC Docket No. 96-187, *Report and Order and First Order on Reconsideration*, FCC 99-173 (rel. Aug. 3, 1999).

[63] Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, *Memorandum Opinion and Order*, 8 FCC Rcd 6752, 6761 (1993).

lowest possible price) and creates a burden (of recovering shared fixed and common costs over a smaller base of customers) for those customers remaining on the ILEC's network."[64]

USTA's proposal would allow all incumbent LECs to file contract-based tariffs.[65] This particular reform is long overdue. Incumbent LECs should have the same opportunity as their competitors to respond to customer requests. Providing incumbent LECs with this opportunity will facilitate efficient pricing and provide more choices for customers in the form of more service options, more competitive prices and more service providers. This has proved to be the case in California where the state commission granted incumbent LECs the ability to enter into contracts:

> In our view, it is appropriate that the LECs should have greater contracting flexibility in competitive areas. Firms compete in part on the basis of their ability to tailor their services to meet the needs of specific customers, and these customer-specific arrangements may also reduce the LECs' cost of serving the customer by eliminating services that the customer does not need but that are part of a tariffed package. And if the tailored price makes some contribution toward the fixed costs of operating the network, the LEC's other customers are better off than they would be if the LEC's competitor won the customer's business.[66]

In fact, 49 states have implemented some form of contract based tariffs for incumbent LECs.[67]

For price cap LECs' annual filing to adjust rates for productivity, inflation and other exogenous events, tariffs would be filed on seven or fifteen days' notice pursuant to Section

[64]Richard Schmalensee and William Taylor, "The Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments: A Primer," USTA Comments, RM 9210 at 5.

[65] The Commission recently adopted a proposed pricing flexibility plan that grants greater pricing flexibility to price cap LECs as competition for specific services develops. One of the flexibilities permitted is the ability to file contract-based tariffs. *See,* "Commission Adopts Pricing Flexibility and Other Access Reforms," News Release, August 5, 1999. [Pricing Flexibility News Release].

[66]*In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers. And Related Matters,* Public Utilities Commission of the State of California, 1.87-11-033, September 15, 1994.

204(a)(3). Adjustments to the PCI, API and SBI would be demonstrated. An above cap or above band filing would be made on 45 day's notice, reduced from 120 days, and would include a cost support showing. Any other streamlined tariff filings, including rate changes, would comply with the statutory requirements of Section 204(a)(3) supported by a demonstration that the basket and band indices have not been exceeded.

Rate changes, including biennial tariffs, filed on a streamlined basis should also meet the statutory notice requirements and include an explanation of the changed matter, the reasons for the filing, the basis of the ratemaking employed and economic information to support the change, including a brief description of the costs for all elements for the most recent twelve month period and projected costs. When supporting data is requested for common line revenue requirements, the SLCs and PICCs would be based on cost and demand data subject to the ceilings established in Part 69.

The optional tariff requirements under the current Part 61.39 rules are expanded to include any carrier with less than two percent of the nation's access lines. Carriers utilizing this option would file an explanation and supporting data would be made available if requested by the Commission.

USTA's rules would also permit a rate of return carrier to file its own carrier common line tariff for one or more of its study areas without doing so for all of its study areas. Those carriers would not be eligible for long term support for those study areas.

In addition, USTA's rules allow telephone companies involved in mergers that wish to have more than 50,000 common lines reenter the common line pool may do so by filing an application with the Commission.

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[67] *See*, attached state pricing flexibility matrix.

USTA's Part 61 rules also include the following modifications.

- changes the notice period for tariff filings to make corrections from three days' notice to one day's notice;
- eliminates the requirement that tariffs must be in effect for thirty days before any changes can be made; and,
- extends special permission grants from sixty days to ninety days.

Relief from the detailed cost support requirements as described above is in the public interest. Current complaint procedures will continue to provide any party with the opportunity to challenge a tariff filing. These changes are essential to the establishment of a pro-competitive, de-regulatory telecommunications policy.

Part 64 - Miscellaneous Rules Relating To Common Carriers (Accounting Safeguards Division, International Bureau, Policy and Program Planning Division, Competitive Pricing Division).

As explained in its 1998 proposal, the Part 64 rules contain many Subparts that USTA believes should be deleted. As the attached matrix shows, USTA recommends deleting Subpart A, Traffic Damage Claims, Subpart C Furnishing of Facilities to Foreign Governments for International Communications, Subpart G, Furnishing of Enhanced Services and Customer Premises Equipment by Communications Common Carriers; Telephone Operator Services, Subpart H, Candidates for Federal Office and Subpart T, Separate Affiliate Requirements for Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services or In-Region International Interexchange Services. In a separate matrix, USTA provides recommendations and new rules which streamline the requirements contained in Subpart I, Allocation of Costs.

The Subparts listed above are no longer necessary. Incumbent LECs maintain records of traffic damage claims as required by the IRS and SEC. There is no reason for the Commission to duplicate these requirements or to specify that the claims must be in writing. Furnishing facilities to foreign governments or to candidates for federal office can be handled through the contract process consistent with treaties and other applicable state and federal laws.

Certainly the Commission's prohibition on the bundling of enhanced service and CPE has long outlived its purpose. In its comments submitted in CC Docket Nos. 98-183 and 96-61, USTA explained that in a competitive environment, wherein every provider of telecommunications service except the incumbent LEC is permitted to bundle equipment with service, this prohibition is anti-competitive. There is no reason to prevent the incumbent LEC from providing the "one-stop shopping" which customers desire and other providers offer. In the rapidly evolving digital world, differentiating between CPE and service is increasingly difficult. This Subpart should be eliminated.

USTA has consistently opposed the Commission's decision to extend the separate subsidiary requirements on independent incumbent LECs offering long distance service.[68] For many years, independent incumbent LECs have been free to offer long distance services within their service territories and have been doing so in substantial and growing numbers. In fact, almost 300 of USTA's member companies are involved in some aspect of the long distance market and more companies are entering that market every day. The participation of incumbent LECs in the provision of long distance service has been beneficial for consumers. There has been no evidence of any anticompetitive conduct.

The Commission recently reduced the burden on independent incumbent LECs by reconsidering its decision and concluding instead that independent LECs that provide in-region,

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[68]USTA Petition for Reconsideration, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934 as amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, filed August 4, 1997.

long distance services solely on a resale basis should be permitted to provide such services through a separate corporate division rather than a separate corporate affiliate.[69] This is a step in the right direction but does not alleviate the administrative burden. Independent LECs will still be required to keep separate books of account and comply with the affiliate transaction rules. There is a fundamental difference between making a business decision regarding the most efficient and effective manner to provide long distance service and being forced to comply with a government mandate regarding how to structure a company in order to offer long distance service. This is particularly egregious here because there is still no evidence that any improper cross subsidization or misallocation of costs exists. The Commission's decision again rests entirely on the "potential" or the "possibility" or the "likelihood" of improper practices. Such a rationale for regulation does not reflect the competitive environment that Congress sought to create in 1996.

The Commission has decided that regulation is not required to ensure that interexchange prices are just, reasonable and non-discriminatory. Interexchange carriers are not subject to regulation and even AT&T has been classified as a non-dominant carrier.[70] AT&T and the other major interexchange carriers which control the overwhelming share of the interexchange market are able to enter the local markets of the independent incumbent LECs without establishing a separate subsidiary. It is ludicrous to assume that the independent incumbent LECs can impede the efforts of these globally based carriers in the interexchange market. The service regions of these LECs are small and generally do not traverse LATA boundaries. The amount of traffic

[69] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace; Leaco Rural Telephone Cooperative, Inc. Petition for Waiver, CC Docket Nos. 96-149, 96-61, FCC 99-103, *Second Order on Reconsideration and Memorandum Opinion and Order* (rel. June 30, 1999).
[70] Motion of AT&T Corp. To be Reclassified as a Nondominant Carrier, 11 FCC Rcd 3271 (1995).

carried by these LECs is but a small fraction of the traffic carried by the major interexchange carriers. The Commission has long recognized that regulations associated with dominant carrier classification can dampen competition when applied to a competitive industry.[71] Subpart T should be eliminated.

The current Part 64 rules also contain CAM filing and audit requirements. These requirements are extremely costly to perform and the administrative burdens are enormous. Further, whenever an incumbent LEC wants to modify its CAM, it must file a request with the Commission that is subject to public comment.

Ultimately, the Commission should eliminate the requirement to allocate costs between regulated and nonregulated activities. In a pro-competitive environment, such an allocation is unnecessary. Price cap regulation breaks the link between prices and booked costs. For competitive services, the antitrust laws will protect consumers from predatory pricing. Furthermore, all carriers are subject to the prohibition of cross subsidization included in Section 254(k) of the Act. Therefore, USTA believes that the Part 64 rules should be eliminated. At the very least, the Commission should adopt USTA's proposals to streamline the Part 64 implementation requirements.

[71] Regulatory Treatment of LEC Provision of Interexchange Services at ¶ 37.

During the June 2 workshop, USTA explained that the administrative burden and expense associated with the Part 64 cost allocation audits could be greatly reduced if the Commission would adopt a two year CAM audit schedule whereby the independent auditors would perform a Compliance audit every other year based on one year's data and rotated so that the same items are not tested each time.[72]

In its *ex parte*, USTA recommended that if the Commission continues the Fairly Presents Financial audit, it should require an adjustment only if the results of the audit impact nonregulated operations by $1 million or two percent of nonregulated operating expense, whichever is higher. Finally, when aggregating the Part 64 audit results, USTA recommended that items less than five percent of the materiality threshold should not be aggregated.[73]

Specifically, USTA recommends the following changes:

- eliminate the three year usage forecasts for Central Office and Outside Plant accounts;
- eliminate the requirement to quantify CAM changes to time reporting procedures, affiliate transactions and cost apportionment table;
- eliminate the fifteen day pre-approval requirement[74];
- eliminate the product matrix in Section II of the CAM;
- eliminate the annual, external audit which can cost up to $1 million (not including the costs of the Common Carrier Bureau's review of the work papers); and,

[72] The Commission has proposed to change the external audit to an attest audit and to conduct the audit every other year based on two years of data in its Phase I NPRM.
[73] For example, a materiality threshold of $1 million would not require transactions that are $50,000 or less to be aggregated. A materiality threshold of $10 million would not require transactions that are $500,000 or less to be aggregated.
[74] This proposal is included in the Phase I NPRM.

- utilize Class B level accounts consistent with Part 36 and fixed factors to simplify the current process.

Part 65 - Interstate Rate Of Return Prescription Procedures And Methodologies (Accounting Safeguards Division).

USTA reiterates its 1998 proposal to streamline the Part 65 rules to reduce the regulatory burden on both rate of return and price cap incumbent LECs. These changes and the resulting rules are attached.

Reporting requirements are eliminated for rate of return LECs and for price cap LECs except when a lower formula adjustment is filed. In addition, services that are excluded from price cap regulation under the pricing flexibility plan contained in Part XX would not be subject to the prescribed rate of return. The maximum allowable rate of return calculation in Section 65.700 is modified to calculate the maximum allowable rate of return on all access elements in the aggregate instead of for each access category. Finally, Section 65.702 is revised to measure earnings on an overall interstate basis instead of separately for each access category. These rules changes are designed to reduce unnecessary administrative burdens.

Part 68 - Connection Of Terminal Equipment To The Telephone Network (Network Services Division).

The Common Carrier Bureau recently held a public forum to solicit input for a planned rulemaking to consider options for streamlining or eliminating equipment registration and telephone network connection requirements contained in Part 68 of the Commission's rules. The Bureau requested input on methods that depend more on an industry program to achieve desired or necessary levels of network protection. The Bureau noted that it did not propose to change the Commission's policy of fully competitive provision of customer premises equipment and did not intend to change the Commission's policy to protect the telephone network from harmful CPE or interconnection.

USTA believes that it is possible to develop a program that is effective in protecting the network from harm while placing increased reliance on the manufacturers, testing laboratories and industry standards developers. However, any program must be based on the Commission's policy to protect the network and to prevent equipment from causing harm to the network or the services of other users. The Commission must maintain sufficient enforcement capability to carry out that objective. In addition, the program must also build upon the Commission's ongoing activities regarding the liberalization of equipment authorizations establishment of Mutual Recognition Agreements with other countries.

The Commission can rely on the various standards organizations that currently exist for the development of new, as well as the maintenance of existing, technical requirements. The Commission could qualify such organizations and even convene or take "bids" from certain groups to make them responsible for the development and maintenance of standards in specific areas. Accredited laboratories could perform testing. While the Commission should continue to require that a database in one location be maintained to record all of the approved equipment registration numbers, the establishment of the registration number and the notification in the database could be automated.

Part 69 - Access Charges (Competitive Pricing Division).

As proposed in 1998, USTA resubmits its restructured rules in which Part 69 will apply only to rate of return incumbent LECs. A description of the rules changes and the resulting rules is attached. As described above, the access tariff rules currently in Part 69 would be moved to

Part 61. USTA's proposal streamlines the other Part 69 rules to be consistent with the pro-competitive, deregulatory telecommunications policy.

USTA has consistently argued that the current Part 69 rules are overly burdensome. The Commission recently agreed to forbear from applying the Part 69 rules governing the introduction of new services to mid-size LECs and permitted price cap LECs to file tariffs for new services on a streamlined basis, without prior approval or cost support requirements.[75] The Commission should also eliminate these rules for the remaining incumbent LECs. The current process, which requires that an incumbent LEC seek a waiver of the rules in order to introduce a new service that does not fit the list of codified access charge elements and subelements, is completely contrary to the purpose of the Act to encourage innovation and accelerate the delivery of new services to all customers. The fact that this requirement only applies to the smallest incumbent LECs that serve rural areas will make it more difficult for customers in rural areas to receive new services.

USTA's rules changes also streamline the access structure into four elements: Transport (includes special access), Switching, Common Line and Other. The Transport, Switching and Other access elements do not contain codified subelements. The Common Line access element contains four subelements: SLCs, PICCs, CCL and Special Access Surcharge. The structure for the EUCL and PICC are Residence, with no distinction between primary and non-primary residence,[76] Single Line Business and Multi-Line Business. EUCL and PICC rates are based on

[75] Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, AAD File No. 98-43, *Sixth Memorandum Opinion and Order*, FCC 99-108 (rel. June 30, 1999) and Pricing Flexibility News Release.
[76] Such a distinction, particularly for rate of return LECs raises concerns regarding universal service and administration.

nationwide average prices charged by price cap LECs.[77] CCL charges recover the common line revenue requirement not recovered through the EUCL, PICC and Special Access Surcharge. Special construction charges, individual case basis charges and contract-based service charges are excluded from revenue requirement calculations.

USTA's new Part 69 rules provide an opportunity for pricing flexibility by establishing a zone pricing plan for charges associated with the Transport, Switching and Common Line elements. The new Subpart F establishes competitive triggers and allows for additional pricing flexibility for rate of return LECs. For example, if a rate of return LEC voluntarily opens its network by publishing a list of unbundled network elements pursuant to Part 51 of the rules and provides number portability, that LEC may offer interstate services on an individual case basis and file contract-based tariffs. Further, if a rate of return LEC signs a state-approved interconnection agreement, that LEC should be classified as a non-dominant carrier. These competitive triggers will permit rate of return LECs to respond to competition as it develops. Such pricing flexibility is critical for these LECs whose access revenues typically account for sixty percent of their total revenues. These carriers often only have one or two large volume customers. The loss of one to a competitor could be devastating. USTA has also added a trigger whereby rate of return LECs would be treated as dominant if a cable company provides telephone or equivalent services within the telephone company serving area.

Other changes recommended by USTA include:

- a new Subpart C to address the apportionment of net investment between interexchange, billing and collection and the new access elements;

[77]This will provide a guideline to ensure that rates are reasonable in both urban and rural areas of the nation.